A

Chew Jian Yaw v Public Prosecutor

B HIGH COURT (KUALA LUMPUR) — CRIMINAL APPEAL NO WA-42(ORS)-1–02 OF 2023
NOORIN BADARUDDIN J
5 JUNE 2024

C *Criminal Procedure — Seizure of property under s 25(1) Dangerous Drugs (Forfeiture of Property) Act 1988 ('Act') — Application under s 32(2) of Act to release seized property — Whether sessions judge erred in relying solely on prosecution's evidence of presumption and suspicion to hold that seized property was proceeds of illegal activity — Whether judge erred in wholly disregarding credible* D *oral and documentary evidence adduced by appellant to show seized property was not illegal and that he was lawfully entitled thereto — Whether sessions judge imposed wrong burden of proof (of proof beyond reasonable doubt) on appellant — Whether order of sessions judge forfeiting seized property to the government was plainly wrong*

E

Following the appellant's arrest on suspicion of being involved in drug trafficking activities, some of his properties, including RM604,270 in a bank account ('the impugned monies/account'), were seized under s 25(1) of the Dangerous Drugs (Forfeiture of Property) Act 1988 ('the Act') on the ground F that they constituted illegal properties under the Act. Although he was charged with committing an offence under s 39B of the Dangerous Drugs Act 1952 ('the DDA'), the appellant was acquitted and discharged of same. After hearing the appellant's application under s 32(2) of the Act for release of his seized properties, the sessions court made various rulings including an order that the G impugned monies be forfeited to the Government of Malaysia. Relying solely on the evidence of the investigating officer ('SR1'), the sessions judge ruled that the impugned monies were the proceeds of illegal activities. SR1 had testified that police investigations revealed many transactions between the impugned account and certain identified persons who were suspected of being involved in H drug trafficking activities and who were charged in court under s 39B of the DDA. The judge found that the appellant had failed to explain his relationship to the said identified persons and why they had banked in large sums of money into the impugned account. The court held that the appellant was obliged to prove that each and every transaction affecting the impugned monies was I legitimate and legal but he had failed to do so. The appellant appealed against the decision.

Held, allowing the appeal, setting aside the sessions court's decision with regard to the impugned monies and ordering the same to be released to the appellant:

(1) No presumption of illegality applied against a seized property that was sought to be released under s 32(3) of the Act. Pursuant to that provision, the elements which the court had to determine and which the applicant had to prove on balance of probabilities were that no offence under the Act or under the DDA had been committed in respect of the property claimed, that such property was not illegal property and that the claimant was lawfully entitled thereto (see paras 7–11).

(2) By requiring the appellant to prove that his source of income was not illegal by showing a detailed money trail of each transaction relating to the impugned monies, the sessions judge had imposed a wrong burden of proof upon the appellant — ie, of proof beyond reasonable doubt — when the burden in law was only to prove on balance of probabilities. The appellant only needed to adduce sufficient credible evidence to show that the property was acquired by him through lawful means and that he was entitled to the property in question (see para 19).

(3) The appellant had given his evidence in court supported by documentary evidence and further corroborated by two witnesses, SP3 and SP4. SP3 was the appellant's business partner and SP4 was the accountant who managed the appellant's companies. The documentary evidence tendered in evidence included photographs of the appellant's business premises, statements of accounts and profiles of the companies where he was shareholder and director, statements of the salaries he earned and his income tax assessments for the years 2016 to 2020. The sessions judge had completely ignored and failed to address and evaluate these documentary evidence as well as the testimonies of SP3 and SP4 without giving any reason for doing so. This was a serious misdirection on the judge's part. All the evidence adduced by the appellant was consistent and supported the probabilities of the appellant's case (see paras 20–28).

(4) The appellant's burden was only to prove that he had earned income and that the monies were legal. He had no burden to explain each and every transaction relating to the impugned monies. The sessions judge had completely ignored the gains that the appellant could have reasonably obtained from shrewd and careful investments of his employment and partnership income and his other legitimate sources of income. The judge's failure to make a specific finding that the appellant had failed to discharge his burden of proof on balance of probabilities was a misdirection (see paras 29–30).

(5) No evidence was adduced by the prosecution to show that the impugned monies were proceeds of illegal activities. The prosecution's evidence was purely based on presumption and suspicion. SR1 could not confirm that the three individuals who had paid monies into the impugned account had been convicted of any drug offence, and that being the case, the

monies they had credited could not be said to be related to illegal activities or illegal proceeds. The appellant had satisfied the burden of showing that no offence under the Act or the DDA had been committed in respect of the impugned monies, that the said monies were not illegal property and that he was legally entitled thereto (see paras 16–17 & 31).

[Bahasa Malaysia summary

Berikutan penahanan perayu kerana disyaki terlibat dalam aktiviti pengedaran dadah, beberapa hartanya, termasuk RM604,270 dalam akaun bank ('wang/akaun yang disangkal'), telah disita di bawah s 25(1) Akta Dadah Berbahaya (Pelucuthakan Harta) 1988 ('Akta tersebut') atas alasan bahawa ia merupakan harta haram di bawah Akta tersebut. Walaupun dia telah didakwa melakukan kesalahan di bawah s 39B Akta Dadah Berbahaya 1952 ('ADB'), perayu telah dibebaskan dan dilepaskan daripada pertuduhan tersebut. Selepas mendengar permohonan perayu di bawah s 32(2) Akta tersebut bagi pelepasan hartanya yang disita, mahkamah sesyen membuat pelbagai keputusan termasuk perintah supaya wang yang disangkal itu dilucuthakkan kepada Kerajaan Malaysia. Hanya bergantung pada satu-satunya keterangan pegawai penyiasat ('SR1'), hakim mahkamah sesyen memutuskan bahawa wang yang disangkal itu adalah hasil daripada aktiviti haram. SR1 telah memberi keterangan bahawa penyiasatan polis mendedahkan banyak transaksi antara akaun yang disangkal dan orang yang dikenal pasti tertentu yang disyaki terlibat dalam aktiviti pengedaran dadah dan yang didakwa di mahkamah di bawah s 39B ADB. Hakim mendapati perayu gagal menjelaskan hubungannya dengan individu yang dikenal pasti tersebut dan mengapa mereka telah memasukkan wang dalam jumlah besar ke dalam akaun yang disangkal. Mahkamah memutuskan bahawa perayu bertanggungjawab untuk membuktikan bahawa setiap transaksi yang melibatkan wang yang disangkal adalah sah dan berdasarkan undang-undang tetapi dia gagal berbuat demikian. Perayu merayu terhadap keputusan itu.

Diputuskan, membenarkan rayuan, mengetepikan keputusan mahkamah sesyen berkenaan dengan wang yang disangkal dan memerintahkan perkara yang sama dilepaskan kepada perayu:

(1) Tiada anggapan penyalahan undang-undang dikenakan terhadap harta yang disita yang telah diminta untuk dilepaskan di bawah s 32(3) Akta tersebut. Menurut peruntukan itu, unsur-unsur yang harus ditentukan oleh mahkamah dan yang perlu dibuktikan oleh pemohon atas imbangan kebarangkalian adalah bahawa tiada kesalahan di bawah Akta tersebut atau di bawah ADB telah dilakukan berkenaan dengan harta yang dituntut, bahawa harta tersebut bukan harta yang menyalahi undang-undang dan bahawa pihak yang menuntut berhak ke atasnya secara sah (lihat perenggan 7–11).

(2) Dengan menghendaki perayu membuktikan bahawa sumber

pendapatannya tidak menyalahi undang-undang dengan menunjukkan jejak wang terperinci bagi setiap transaksi yang berkaitan dengan wang yang dipertikaikan, hakim mahkamah sesyen telah mengenakan beban pembuktian yang salah kepada perayu — iaitu pembuktian melampaui keraguan munasabah — apabila beban dalam undang-undang hanya pada imbangan kebarangkalian. Perayu hanya perlu mengemukakan keterangan yang boleh dipercayai yang mencukupi untuk menunjukkan bahawa harta itu diperolehi olehnya melalui cara yang sah dan bahawa dia berhak ke atas harta berkenaan (lihat perenggan 19).

(3) Perayu telah memberikan keterangannya di mahkamah dengan disokong oleh keterangan dokumen dan selanjutnya disokong oleh dua orang saksi, SP3 dan SP4. SP3 adalah rakan kongsi perniagaan perayu dan SP4 adalah akauntan yang menguruskan syarikat perayu. Keterangan dokumentari yang dikemukakan dalam keterangan termasuk gambar premis perniagaan perayu, penyata akaun dan profil syarikat di mana beliau memegang saham dan pengarah, penyata gaji yang beliau perolehi dan taksiran cukai pendapatan beliau bagi tahun 2016 hingga 2020. Hakim mahkamah sesyen telah mengabaikan sama sekali dan gagal untuk mengambilkira dan menilai keterangan dokumentari ini serta keterangan SP3 dan SP4 tanpa memberi sebarang sebab untuk berbuat demikian. Ini adalah salah arah yang serius di pihak hakim. Semua keterangan yang dikemukakan oleh perayu adalah konsisten dan menyokong kebarangkalian kes perayu (lihat perenggan 20–28).

(4) Beban perayu hanyalah untuk membuktikan bahawa dia telah memperoleh pendapatan dan bahawa wang itu adalah sah. Dia tidak mempunyai beban untuk menjelaskan setiap transaksi yang berkaitan dengan wang yang dipertikaikan. Hakim mahkamah sesyen telah sama sekali tidak mengendahkan keuntungan yang boleh diperolehi secara munasabah oleh perayu daripada pelaburan cerdik dan teliti bagi pendapatan pekerjaan dan perkongsiannya serta sumber pendapatan sahnya yang lain. Kegagalan hakim untuk membuat dapatan khusus bahawa perayu telah gagal melepaskan beban pembuktiannya pada imbangan kebarangkalian adalah satu salah arah (lihat perenggan 29–30).

(5) Tiada keterangan dikemukakan oleh pihak pendakwaan untuk menunjukkan bahawa wang yang dipertikaikan adalah hasil daripada aktiviti haram. Keterangan pihak pendakwaan adalah semata-mata berdasarkan anggapan dan syak wasangka. SR1 tidak dapat mengesahkan bahawa ketiga-tiga individu yang telah membayar wang ke dalam akaun yang didakwa telah disabitkan dengan mana-mana kesalahan dadah, dan dalam hal ini, wang yang mereka kreditkan tidak boleh dikatakan berkaitan dengan aktiviti haram atau hasil haram.

A Perayu telah membuktikan beban dalam menunjukkan bahawa tiada kesalahan di bawah Akta tersebut atau DDA telah dilakukan berkenaan dengan wang yang dipertikaikan, bahawa wang tersebut bukan harta yang menyalahi undang-undang dan bahawa dia berhak ke atasnya di sisi undang-undang (lihat perenggan 16–17 & 31).]

B

Cases referred to

Jason Chan Huan Seng & Ors v PP and other appeals [2015] 1 MLJ 701; [2015] 2 CLJ 605, CA (refd)

PP v Lim Kim Hoei & Anor [2014] 3 MLJ 534; [2014] 4 CLJ 816, CA (refd)

C

Legislation referred to

Dangerous Drugs (Forfeiture of Property) Act 1988 ss 25(1), 32(2), (3), 35

Dangerous Drugs Act 1952 s 39B

Limited Liability Partnership Act 2012 s 9

D

Shah Rizal bin Abdul Manan (Shah & Hurrie) for the appellant.

Noorhani bt Muhmmed Ayub (with Nik Mohd Fadli bin Dato' Nik Azlan) (Deputy Public Prosecutor, Attorney General's Chambers) for the prosecution.

E **Noorin Badaruddin J:**

[1] The appellant was arrested on 27 June 2020 for being involved in trafficking in dangerous drugs under s 39B of the Dangerous Drugs Act 1952 ('the DDA') which led to the seizure of certain properties belonging to the appellant under s 25(1) of the Dangerous Drugs (Forfeiture of Property) Act 1988 ('the Act'). It is the police's case that they had reason to believe that the properties constituted illegal properties under the Act.

F

G **[2]** An application was then made by four applicants including the appellant herein under s 32(2) of the Act for the seized properties to be released on the ground that they were lawfully entitled to the said properties.

[3] Pursuant to s 32(3) of the Act, the sessions court made various rulings in regards to the seized properties and one of the properties marked as E28 ('E28/the property') in the form of monies, the amount of which was RM604,270 in the CIMB account belonging the appellant herein was ordered to be forfeited to the Government of Malaysia and hence this appeal.

H

I SUMMARY OF THE APPELLANT'S CONTENTIONS

[4] Summarily, it is the appellant's contentions that:

(a) the appellant succeeded in proving that the property is not illegal property on balance of probabilities; and

(b) the learned sessions judge erred in finding that the property is illegal property premised on presumption and suspicion without proof.

SUMMARY OF THE RESPONDENT'S CONTENTION

[5] Summarily, the respondent contends that the appellant has failed to proffer sufficient evidence to prove that the property was obtained legally or from a legal source and as such the appellant had failed to prove that he is entitled to the property.

FINDINGS

[6] The appellant filed the present application before the sessions court under s 32(2) of the Act which states:

> 32 Forfeiture of property seized under this Act where there is no prosecution, or no proceedings under Part III or no claim thereto
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> (1) Where any property has been seized under this Act, other than under or by virtue of Part VII, and —
>
> (a) no prosecution for any offence under any law is instituted with regard to such property;
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> (b) no proceedings are commenced by the Public Prosecutor for the forfeiture of such property under Part III; and
>
> (c) no claim in writing is made by any person that he is lawfully entitled to such property and that it is not liable to forfeiture under this Act or under the Dangerous Drugs Act 1952, within three months from the date of its seizure, the property shall become forfeited immediately upon the expiration of the said period of three months.
>
> (2) Where within three months from the date of the seizure of any property under this Act, *a claim in writing is made thereto by any person in the terms mentioned in paragraph (1)(c), the Public Prosecutor shall within fourteen days after the expiry of the said period of three months, refer such claim to a Sessions Court for its decision.* (Emphasis added.)

[7] In determining the application made under s 32(2) of the Act, the court must adhere to the provision of sub-s 32(3) wherein:

> (3) The Sessions Court to which a claim is referred under subsection (2) shall issue a summons requiring the person claiming that he is lawfully entitled to the property, and the person from whom it was seized, if he and his whereabouts are known, to appear before the court and upon such appearance or in default of such appearance, upon due service of such summons being proved, *the Sessions Court shall proceed to the examination of the matter and Sessions Court shall proceed to the examination of the matter and if satisfied that no offence under this Act or under the Dangerous Drugs Act 1952 has been committed in respect of the property claimed and that such property is not*

A *illegal property, shall order the same to be released to the person claiming the same upon proof that he is lawfully entitled thereto, and shall, in any other case, order the property to be forfeited.* (Emphasis added.)

B **[8]** It is trite law that as claimant to the property, the appellant will have to prove his claim on balance of probabilities (see: *Jason Chan Huan Seng & Ors v Public Prosecutor and other appeals* [2015] 1 MLJ 701; [2015] 2 CLJ 605; *Public Prosecutor v Lim Kim Hoei & Anor* [2014] 3 MLJ 534; [2014] 4 CLJ 816).

C **[9]** It is pertinent to note that in *Jason Chan Huan Seng & Ors v Public Prosecutor and other appeals* [2015] 1 MLJ 701; [2015] 2 CLJ 605, the Court of Appeal by majority had elaborated and stated that the presumptive provision of illegal property under s 35 of the Act would not extend to the realm of a D proceeding undertaken under s 32(3) of the Act. The majority decision in that case preferred the view of the same court in *Public Prosecutor v Lim Kim Hoei & Anor* [2014] 3 MLJ 534; [2014] 4 CLJ 816. The court by majority through the judgment of Abang Iskandar JCA (as His Lordship then was) went on to state:

E [83] ... we are in agreement with the learned counsel for the appellants in that the presumption of illegality against the property does not apply against a seized property which a claimant seeks to be released to him under s 32(3) of the FOP Act, as being the lawful owner of that property. Proceedings under s 32(3) comes under a specific regime under the FOP Act to which the presumption of illegal property F under s 35 does not apply.

[10] Therefore, in light of the presumption of illegal property under s 35 of the Act does not apply, the elements which the court will have to determine and G for the appellant to prove on balance of probabilities are whether the property in question herein is not illegal property and that the appellant is lawfully entitled thereto.

[11] Apart from the two elements stated in the above, firstly, it must be H shown or proved that no offence under the Act or the DDA has been committed in respect to the property. This is what the Court of Appeal has stated in *Jason Chan Huan Seng & Ors v Public Prosecutor and other appeals* [2015] 1 MLJ 701; [2015] 2 CLJ 605:

I [76] *As to the requirements to satisfy the examining court regarding the elements that there was no offence under the FOP Act or the Dangerous Drugs Act 1952 having been committed in respect of the said property that is being claimed and that such property is not illegal property, such evidence must come from the investigating officer as he is the person in possession of the required information and knowledge about those issues.* (Emphasis added.)

[12] The investigating officer, SR1 in cross-examination at Vol 2 p 144 of the appeal record agreed that his decision to seize the property was based on suspicion that the property was obtained illegally. SR1 stated as follows:

> S25: Tuan sita harta Penuntut ini hanya semata-mata kerana Tuan syak saje yang harta ni datang dari aktiviti yang menyalahi undang-undang sebab dia kena tangkap bawah 39B, betul tak?
>
> J25: Betul Yang Arif
>
> S26: Saya kata kan, kalau Tuan betul-betul pasti bahawa sumber harta ini datangnya dan aktiviti pengedaran atau illegal, perkara ini akan dibawa terus ke Mahkamah Tinggi untuk 1 prosedur lain, setuju dengan saya?
>
> J26: Tidak setuju
>
> S27: Kalau Tuan betul-betul pasti bahawa sumber harta ini datangnya dari aktiviti menyalahi undang-undang, prosiding perlucuthakan di bawah seksyen 8 yang sepatutnya dijalankan dan bukannya seksyen 32, setuju dengan saya?
>
> J27: Tidak setuju, Yang Arif
>
> *S28: Dan asas kepada siasatan Tuan saya katakan hanya kerana Tuan syak sahaja harta ini diperoleh dari sumber yang menyalahi undang-undang, setuju dengan saya?*
>
> *J28: Setuju, Yang Arif*
>
> S29: *Walaupun setakat hari ini belum ada apa-apa lagi dapatan yang menjurus kepada sebarang aktiviti yang menyalahi undang-undang, setuju tak dengan saya?*
>
> *J29: Setuju Yang Arif*
>
> PB P2: Sebab Penuntut ni pun belum dibicarakan lagi untuk kes 39B tu (Emphasis added.)

[13] Upon further reading of SR1's evidence, three reasons can be summarised as to why the police seized the property, ie:

(a) the money in the appellant's CIMB account/E28/the property was said to be a large sum of money;

(b) the transactions reflected in the account were suspected to be related to illegal activity; and

(c) that the appellant was charged with an offence under s 39B of the DDA.

[14] In support, the police relied on the appellant's account statement from CIMB Bank ('R36 a-b') and criminal records of three individuals who had transacted with the appellant as reflected in R36 a-b in E28. Apparently the three individuals were also arrested for drugs offences.

[15] The learned sessions judge for that matter found that the property was proceed from illegal activities and relied solely on SR1's evidence. The learned

sessions judge found as follows:

> [29] Memandangkan beban pembuktian adalah di bahu SP2 (*the appellant*) sebagaimana dinyatakan dalam perenggan 26 di atas, beliau telah mengemukakan penyata-penyata cukai pendapatannya bagi tahun taksiran 2016 (eksh P17), 2017 (eksh P5), 2018 (eksh P6), 2019 (eksh P18) dan 2020 (eksh P7) serta empat keping gambar dua kedai buah-buahan SP2 bersama dengan rakan kongsinya. SP3 (eksh P19 (A-D)) bagi membuktikan sumber pendapatan beliau.
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> [30] SP2 juga telah mengemukakan SP3 dan SP4 sebagai saksi-saksi beliau bagi menyokong tuntutan beliau mengenai harta E28 tersebut yang mana SP4 telah mengemukakan Summary of Salary SP2 dalam Goldsuncity KL PLT (eksh P12).
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> [31] Dalam hal ini, SP2 hendaklah membuktikan sumber kewangan beliau dengan pasti dan jelas dengan menunjukkan money trail yang jelas dan terperinci bagi setiap transaksi yang dibuat dalam akaun CIMB harta E28 tersebut namun SP2 tidak mengemukakan sebarang bukti dokumentari mahupun mengemukakan saksi tentang pelaburannya dalam Pusat Hiburan Seduce KL bagi menyokong tuntutan beliau sebagaiamana dalam perenggan 17 PSP2 beliau.
>
> [32] Walau apapun SR1 telah memberi keterangan semasa Pemeriksaan Utama bahawa berdasarkan hasil siasatan beliau, terdapat banyak transaksi dalam akaun harta E28 ini di antara SP2 dengan empat orang penama yang telah dituduh di mahkamah di bawah s 39B Akta Dadah Berbahaya 1952 (Akta 234) kerana disyaki terlibat dengan kegiatan pengedaran dadah. Empat orang penama itu adalah penuntut pertama dan tiga orang penama lain yang dinyatakan dalam Semakan Rekod Kesalahan Jenayah daripada Sistem Rekod Jenayah (PDRM) (eksh R37 (A-C)). Ketiga-tiga penama dalam Eksibit R37 (A-C) adalah seperti berikut:
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> (a) Khor Lip Peng (eksh R37 (A));
>
> (b) Lim Swee Heng (eksh R37 (B)); dan
>
> (c) Huan Chee Wei (eksh R37 (C)).
>
> [33] Setelah meneliti penyata akaun CIMB tersebut (eksh R36(A)), mahkamah ini mendapati adalah benar terdapat banyak transaksi wang masuk di antara SP2 dengan keempat-empat penama tersebut dan tiga transaksi wang dikeluarkan namun SP2 tidak menjelaskan apakah hubungan beliau dengan penuntut pertama dan ketiga-tiga penama dalam eksh R37 (A-C) dan alasan mengapa penuntut pertama dan ketiga-tiga penama ada memasukkan wang dalam jumlah yang banyak ke dalam akaun CIMB harta E28 SP2. Terdapat juga wang harta E28 yang dimasukkan melalui cash deposit machine ('CDM') dan MEPS funds transfer ('ATM') yang berkemungkinan adalah hasil kegiatan pengedaran dadah. SP2 langsung tidak menerangkan alasan mengapa setiap transaksi wang masuk melalui CDM dan ATM tersebut. Senarai transaksi wang keluar masuk dalam harta E28 ini adalah seperti dalam Jadual di bawah:
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> ...
>
> [34] Tambahan lagi, SR1 semasa pemeriksaan utama telah memberi keterangan sebagaimana berikut:
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> S31: Baik. Itu sahaja untuk penyata Akaun DSP. Soalan mengenai penyata

akaun, DSP, melalui siasatan DSP sendiri di dalam akaun-akaun Penuntut ini, apa yang menyebabkan DSP sita akaun, wang dalam akaun ini di mana-mana akaun di dalam di hadapan DSP?

J31: Baik Yang Arif. *Pertama adalah kerana jumlah wang yang begitu banyak milik Penuntut yang menimbulkan syak yang munasabah bahawa ianya adalah hasil daripada aktiviti larangan dan yang kedua, dalam siasatan saya terhadap akaun CIMB iaitu eksibit E28 terdapat transaksi yang mencurigakan yang mana ada nama-nama suspek yang pernah terlibat dalam kes pengedaran dadah termasuk dalam transaksi akaun tersebut.*

...

[35] Berdasarkan keterangan SR1 dalam perenggan 34 di atas, mahkamah ini mendapati memang benar terdapat transaksi wang masuk dalam penyata akaun CIMB tersebut (eksh R36(A)) selepas Perintah Kawalan Pergerakan MCO diisytiharkan oleh Kerajaan Malaysia mulai 18 Mac 2020 atas penularan Covid-19 sedangkan kesemua premis perniagaan adalah diarahkan tutup oleh Kerajaan Malaysia. Larangan berniaga secara fizikal oleh Kerajaan Malaysia telah dinyatakan dalam Peraturan-Peraturan Pencegahan dan Pengawalan Penyakit Berjangkit

...

[36] Setelah meneliti setiap transaksi-transaksi tersebut, mahkamah ini mengambil pendekatan dan berpuas hati bahawa transaksi-transaksi yang melibatkan penuntut pertama dan ketiga-tiga penama dalam eksh R37 (A-C) dan wang harta E28 yang dimasukkan melalui CDM serta ATM hendaklah dilucuthak kepada Kerajaan Malaysia sebanyak RM604,270 kerana SP2 hendaklah membuktikan sumber kewangan beliau dengan pasti dan jelas dengan menunjukkan money trail yang jelas dan terperinci bagi setiap transaksi yang dibuat dalam akaun CIMB harta E28 tersebut namun malangnya perkara sedemikian tidak dilakukan oleh SP2. (Emphasis added.)

[16] However, no evidence was adduced as to how the monies reflected in R36 a-b/E38 and the transactions (money credited into the appellant's CIMB account/E38) with the three individuals were said to be illegal transactions or proceeds from illegal activities. On perusal of the entire proceedings before the sessions court, this court finds that the evidence led by the respondent in relation to the monies/the property being illegal proceeds were purely based on presumption and suspicion which became the basis of the ruling made by the learned sessions judge. Except for the fact that the three individuals were said to be charged with drugs offences based on the criminal records obtained by SR1, SR1 for that matter could not confirm whether the three individuals were convicted for any drugs offences. So long as the three individuals have not been found guilty for any offence under the DDA, the monies that they have credited into the appellant's account cannot be said to be related to illegal activities or proceeds. SR1 agreed that the criminal record of the three individuals alone was not a conclusive evidence that the money they had credited into the appellant's CIMB account are illegal monies or proceeds from

drug or any other illegal activities. Further and in regards to the appellant, it was uncontroverted that the appellant was discharged and acquitted from the charge under s 39B of the DDA on 19 December 2023.

[17] Therefore, this court finds the seizure of the property under s 25(1) of the Act premised on reasonable suspicion that the property is the subject matter of an offence under the Act or which has been used for the commission of that offence, or illegal property, could no longer stand because the appellant has satisfied the element that no offence under the Act or the DDA having been committed in respect of the said property that is being claimed by the appellant, on balance of probabilities. SR1 for that matter had testified in cross-examination (appeal record Vol 2 p 145) that if the appellant is found not guilty for the offence under s 39B of the DDA, the property must be released to the appellant.

[18] Secondly and as to the elements whether the property in question herein is not illegal property and that the appellant is lawfully entitled thereto, the only burden on the appellant is to adduce sufficient credible evidence that the property was acquired by him through lawful means and that he is entitled to the same.

[19] The learned sessions judge in her judgment had stated that the appellant must prove that his source of income was not illegal by showing a detailed money trail of each transaction in E28. This court agrees with the learned counsel's submission that the learned sessions judge is putting the burden of proving beyond reasonable doubt when the burden on the appellant is on balance of probabilities. The appellant only needs to adduce sufficient credible evidence that the property was acquired by him through lawful means and that he was entitled to the property (see: *Public Prosecutor v Lim Kim Hoei & Anor* [2014] 3 MLJ 534; [2014] 4 CLJ 816).

[20] The appellant had testified in court and gave his evidence supported by documentary evidence. His evidence was further corroborated by two witnesses, SP3 his business partner and SP4 the accountant who managed the appellant's company's account.

[21] It was the appellant's evidence and SP3 that they were partners in the company called Goldsuncity (KL) PLT (No Pendaftaran LLP0015304-GN) operating as fruits supplier at two branches in USJ Taipan and Setia Alam, Selangor. According to SP3, the appellant was managing the two branches and was paid RM15,000 per month as his salary and as director's fees before he was arrested. The appellant received bonuses which were distributed according to the profit gained from their business. SP3 testified that for their business,

transactions were done mostly in the form of cash for easy capital rolling purposes to pay their suppliers.

[22] The appellant adduced the annual account statement of his company which was registered as limited liability partnership with the Companies Commission of Malaysia ('CCM') Although there was no agreement between the appellant and SP3 relating to the partnership, it must be noted that it cannot be gainsaid that the company does not exist because Limited Liability Partnership ('LLP') is an alternative business vehicle regulated under the Limited Liability Partnerships Act 2012 which combines the characteristics of a company and a conventional partnership and under s 9 of the Limited Liability Partnership Act 2012 a written agreement of such partnership is not a requirement.

[23] The appellant further provided photographs of the two branches of shops in USJ and Setia Alam which further proved that the company and the business existed and were in operation before the appellant's arrest. P13 and P16 being the company's statement of accounts for the years 2018 to 2021 were also produced by the appellant.

[24] At the time the appellant was arrested on 27 June 2020, it was in evidence that both the shops were still operating and managed by the appellant's sister and in 2021 the business/shop were changed to convenience store.

[25] Apart from the Goldsuncity (KL) PLT, the appellant together with SP3 were also partners in another company, Asia Prise Sdn Bhd (No Pendaftaran: 1308068-H). The company is said to operate in the area of construction. This was supported by P10, the company's profile with the CCM which shows the appellant being one of the directors and P9 is the certificate of establishment of the company. According to SP3, the appellant had injected capital into the company's projects and the profits would be channeled to the appellant.

[26] The evidence stated in the above was supported by SP4, the company's certified professional accountant who confirmed the appellant's position as director and shareholder of the companies. SP4 further provided P12, being a 'Summary of Salary' showing the salary earned by the appellant as a partner in Goldsuncity (KL) PLT.

[27] The appellant further provided P5, P7, P17 and P18 being his tax assessments for the year 2016 to 2020 which show that the appellant had made declaration of income received to the Inland Revenue.

[28] This court finds that the learned sessions judge had completely ignored and failed to address and evaluate the documentary evidence produced by the appellant and the oral testimonies of SP3 and SP4. There were no reasons given as to why their evidence (SP3 and SP4) and the documentary evidence adduced cannot be accepted or that their evidence are not credible. The documentary evidence adduced by the appellant and the oral evidence by SP3 and SP4 were consistent and supported the appellant's position. When these evidence accord with the probabilities of the appellant's case, it is a serious misdirection for the learned sessions judge to give such evidence little or no weight at all.

[29] The learned sessions judge instead was insisting for the money trail of transactions in E28 to be produced and had accepted and relied only on the evidence of reasonable suspicion of SR1 relating to the property. At the risk of repetition, the appellant's burden was only to prove that he had income earned and the monies received were legal. There cannot be a burden on him to explain each and every transaction in E28 when the learned sessions judge had completely ignored the gains that could be reasonably be obtained by the appellant through shrewd and careful investments of his employment and partnership income and his other legitimate sources of income.

[30] Pertinently, not only the learned sessions judge had failed to evaluate the documentary evidence adduced by the appellant and the oral testimonies of SP3 and SP4, the learned sessions judge further failed to state whether the appellant had failed to discharge his burden on balance of probabilities. It is of the considered view and in light of the evaluation and findings made by the learned sessions judge quoted in the above, which were premised primarily on suspicion, the failure on the part of the learned sessions judge to specifically make a finding that the appellant had failed to discharge his burden on balance of probabilities was a misdirection.

[31] Based on the entire evidence adduced before the sessions court, and in light of the presumption of illegality against the property does not apply, this court is satisfied that there were no sufficient evidence to show that the property/E28 is illegal. This court is further satisfied that the appellant succeeded in proving that the property is not illegal property on balance of probabilities and that he is legally entitled thereto.

CONCLUSION

[32] In the upshot, this court allowed the appeal and set aside the order made by the learned sessions judge in regards to the property, E28. The property/E28 was ordered to be released to the appellant.

Appeal allowed; sessions court's decision with regard to the impugned monies set aside; and the same ordered to be released to the appellant.

Reported by Ashok Kumar